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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

J.R.G., et al.,)	CASE NO. 4:22-cv-05183-KAW
)	
Plaintiffs,)	JOINT CASE MANAGEMENT STATEMENT
)	AND [PROPOSED] ORDER
v.)	
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

The parties to the above-captioned action jointly submit this INITIAL CASE MANAGEMENT STATEMENT pursuant to the Standing Order for All Judges of the Northern District of California and Civil Local Rule 16-9:

1. Jurisdiction and Service

Plaintiffs bring this action under the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 1346, 2671 et seq. There are no issues regarding personal jurisdiction, venue, or service, known at this time. Defendant has been served.

1 Defendant asserts that the Court lacks subject-matter jurisdiction for the reason that Congress has
 2 not waived the federal government’s sovereign immunity from claims for money damages in the
 3 circumstances presented in this case.

4 **2. Facts**

5 Plaintiffs’ Statement:

6 Plaintiffs are a mother and daughter separated shortly after entering the United States in May
 7 2018 who are proceeding in this case under their initials, J.R.G. and M.A.R. ECF No. 1 ¶¶ 18–25.
 8 Around a day after entering, Customs and Border Protection (CBP) officers separated Plaintiffs,
 9 claiming they would soon be reunited. *Id.* ¶ 20. The family would not be reunited for another ten
 10 months. *Id.* ¶ 25.

11 Plaintiffs’ separation occurred pursuant to Defendant’s Zero Tolerance Policy. *Id.* ¶ 36. The Zero
 12 Tolerance Policy “was a pretext or cover for the goal of carrying out the widespread separations of
 13 Central American parents and children along the southern border.” *Id.* ¶ 38. The goal of the policy was
 14 “to separate families and to deter asylum seekers.” *Id.* Under the Zero Tolerance Policy, a parent would
 15 typically be prosecuted for the crime of illegal entry under 8 U.S.C. § 1325 shortly after their entry. In
 16 most cases, the parent would be sentenced to time served, and spend a day or two in criminal custody.
 17 *Id.* ¶ 39. Defendant’s employees used this brief interval to designate a child “unaccompanied” and
 18 would take the child away to be placed in the custody of the Office of Refugee Resettlement. *Id.* ¶¶ 40,
 19 44, 46. The resulting separation often lasted months, creating lasting emotional harm.

20 That is what Plaintiffs experienced here. J.R.G. was in federal criminal custody for less than two
 21 days, yet during that time, her daughter M.A.R. was taken away and they would not see each other again
 22 for nearly a year. *Id.* ¶¶ 25, 42–46. That separation inflicted significant, lasting emotional harm on both
 23 J.R.G. and M.A.R. *Id.* ¶ 58–63, 71–76. Plaintiffs were not reunited until March 2019. *Id.* ¶ 73.

24 Defendant’s Statement:

25 Defendant admits that in 2018, the United States implemented a Zero-Tolerance policy which
 26 directed federal prosecutors along the Southwest border “to the extent practicable, and in consultation
 27 with DHS, to adopt immediately a zero-tolerance policy for all offenses referred for prosecution under
 28

section 1325(a).” Defendant further admits that on May 4, 2018, Secretary Nielsen approved Option 3 - to refer all amenable adults who unlawfully cross the Southwest border for criminal prosecution - of the DHS Referral Memorandum entitled “Increasing Prosecutions of Immigration Violations.” Defendant further admits that some families were separated at the United States–Mexico border during the Zero-Tolerance policy, and some children were classified as Unaccompanied Children (“UCs”) and referred to the Office of Refugee Resettlement (“ORR”) for placement with an ORR-funded care provider. Defendant contends that federal law required that children be placed into ORR custody once the children were classified as UCs. Defendant denies that the Zero-Tolerance policy was to intentionally separate asylum-seeking parents and children at the nation’s southern border or to cause families emotional harm. Defendant admits that the Plaintiff adult and child in this action were separated.

3. Legal Issues

Plaintiffs have asserted three causes of action under Texas law: (1) intentional infliction of emotional distress, (2) abuse of process, and (3) wrongful child abduction. Plaintiffs have alleged that they suffered extreme and lasting emotional harm because of Defendants’ actions. Defendant denies that Plaintiffs are entitled to the requested relief and asserts various defenses, including that Plaintiffs’ claims are barred to the extent that they are based on the exercise or performance, or the failure to exercise or perform, a discretionary function or duty.

The parties believe the Court may be called upon to resolve a number of legal issues, including but not limited to: (1) whether Defendant intentionally inflicted emotional distress upon Plaintiffs; (2) whether Defendant abused judicial process in the conduct of proceedings against Plaintiffs; (3) whether Defendant committed wrongful child abduction; (4) whether Plaintiffs’ claims are barred by the discretionary function exception to the FTCA; (5) whether Plaintiffs’ claims are barred by the FTCA’s exception for actions taken while reasonably executing the law; and (6) whether Plaintiffs’ claims are barred because the challenged government actions have no private-person analogue.

4. Motions

On December 5, 2022, Defendants filed a motion to transfer and dismiss this case. ECF No. 20. The Court denied the motion on April 11, 2023. There are no other pending motions.

1 **5. Amendment to Pleadings**

2 The parties do not anticipate any amendments to the Complaint.

3 **6. Evidence Preservation**

4 The parties certify that they have reviewed the Guidelines Relating to the Discovery of
5 Electronically Stored Information (“ESI Guidelines”), and confirm that they have met and conferred
6 pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and proportionate steps taken to preserve evidence
7 relevant to the issues reasonably evident in this action. Defendant acknowledges its duty to preserve
8 relevant materials in accordance with applicable rules and case law.

9 **7. Disclosures**

10 The parties have met and conferred as part of their Rule 26 obligations and agreed as follows.

11 First, the parties will have an initial disclosure exchange on June 9, 2023.

12 Second, the parties agreed to a 90-day document disclosure period (“90-Day Disclosure Period”),
13 commencing on the date of the Court’s initial case management conference, during which the parties
14 will make rolling document disclosures. During the 90-Day Disclosure Period, Defendant will produce:
15 (1) Common Discovery, defined to be all documents that it disclosed or otherwise produced in *A.P.F. et*
16 *al. v. United States*, Civil Action No. 20-cv-00065-PHX-SRB (D. Ariz.), and *C.M. v. United States*,
17 Civil Action No. 19-cv-05217-PHX SRB (D. Ariz.), that are not specific to the plaintiffs in those two
18 actions, and (2) documents that specifically relate to Plaintiffs in this case. Plaintiffs will produce
19 documents specifically relating to their allegations in this case. The aforementioned documents that the
20 parties agree to produce include the following topics:

21 Documents to be produced by Defendant:

- 22 • The creation, development and implementation of the Zero-Tolerance policy (with particular
- 23 emphasis on application of the Zero-Tolerance policy to adults traveling with family units)
- 24 • Designation of children as UCs when being separated from a parent while in Border Patrol
- 25 custody
- 26 • ORR placement of UCs after being separated from a parent while in Border Patrol custody
- 27 • Tracking of UCs and establishing communication with parents after being separated while in
- 28 Border Patrol custody

- Policies or procedures of CBP, ICE and HHS concerning separation, detention during separation, or reunification
- Each Plaintiff's "Alien File" ("A-File") existing as of the date of its disclosure for purposes of this 90-day document disclosure period (subject to one additional updated disclosure prior to the close of fact discovery, if relevant)
- Plaintiffs' I-213s, CBP subject activity logs, and any transfer or detention records
- For M.A.R., her ORR custody records and all records made by ORR contractors regarding her time in custody

Documents to be produced by Plaintiffs:

- Any records received or maintained by each Plaintiff concerning her respective apprehensions, detentions, separations, reunifications and injuries therefrom, including but not limited to journals, diaries or similar writings/drawings
- Medical and mental health records of each Plaintiff concerning her alleged emotional distress or other injuries, including any documents concerning counseling, therapy or doctor visits, treatment through other service providers, medication, prescriptions, and any billing or receipts
- Any transcripts, report cards, or similar educational records for MAR since her release from ORR custody
- Any records documenting employment, paid or unpaid work or any volunteer activities of JRG since her release from ICE custody at the end of March 2019
- Any written correspondence or records relating to contact between Plaintiffs while JRG was in custody

The parties agree to effectuate service of disclosures, discovery responses and document productions electronically between counsel of record for the parties, with any documents exchanged bearing unique bates-stamping numbering on each page. Documents produced from the *CM* and *APF* litigations will bear the original bates-stamping from productions in those cases.

8. Discovery

In their Rule 26(f) meet and confer, the parties discussed the subject of discovery and made the following agreements.

First, the parties agreed upon a discovery plan involving a close of fact discovery in approximately 15 months, to be followed by a period for expert discovery and then dispositive motions. The parties have agreed to the specific discovery schedule listed in Section 16 below.

Second, the parties agreed that the time period to serve written and/or other discovery under the Federal Rules of Civil Procedure shall commence the day following completion of the 90-Day Disclosure Period. The parties' agreement to the 90-Day Disclosure Period shall not prejudice any party's right to propound discovery requests, nor shall participation in the 90-Day Disclosure Period relieve any party of its obligations under the Federal Rules of Civil Procedure.

Third, the parties discussed the entry of an appropriate protective order that would permit the parties to make the document disclosures and discovery contemplated by their plan. The parties plan to utilize the same protective order provisions that were entered in *Wilbur P.G. v. United States*, 4:21-cv-04457-KAW, which is currently pending in this district. That protective order was entered by the Court on September 7, 2022 after several months of negotiation by the parties in that action and a subsequent unopposed administrative motion for protective order relief brought by the United States explained the reasons for the modifications to the Model Protective Order for the Northern District of California. *See Wilbur P.G. v. United States*, 4:21-cv-04457-KAW, ECF Nos. 54, 58. With the Court's permission, the parties in this case propose to file a joint administrative motion for protective order relief seeking entry of the same substantive protective order for use in this action. The parties also propose to file the same stipulated Federal Rule of Evidence 502(d) Order that was entered by the Court in the *Wilbur P.G.* case. *Wilbur P.G. v. United States*, 4:21-cv-04457-KAW, ECF No. 59.

Finally, the parties have discussed securing HIPAA releases from Plaintiffs for their medical and mental-health records, to make the discovery process more efficient for the parties and Plaintiffs' health-care providers.

9. Class Actions

Not applicable.

10. Related Cases

Defendant provides this list of pending cases that arise out of separations of non-citizen families at the U.S-Mexico border in 2017 or 2018: *C.M. v. United States*, No. 2:19-cv-05217 (D. Ariz.); *A.P.F. et al. v. United States*, No. CV20-00065-PHX-SRB (D. Ariz.); *D.A. v. United States*, No. 20-cv-3082 (N.D. Ill.); *A.E.S.E. v. United States*, No. 2:21-cv-00569 (D. N.M.); *A.F.P. v. United States*, No. 21-

00548 (E.D. Cal.); *Arredondo Rodriguez v. United States*, No. 2:22-cv-02845-JLS (C.D. Cal.); *B.A.D.J. v. United States*, No. 2:21-cv-00215 (D. Ariz.); *B.Y.C.C. v. United States*, No. 3:22-cv-06587 (D. N.J.); *C.D.A. v. United States*, No. 5:21-cv-00469 (E.D. Pa.); *C.M. - D.V. v. United States*, No. 5:21-cv-00234 (W.D. Tex.); *D.A. v. United States*, No. 3:22-cv-00295 (W.D. Tex.); *D.J.C.V. v. United States*, No. 1:20-cv-05747 (S.D.N.Y.); *E.C.B. v. United States*, 2:22-cv-00915 (D. Ariz.); *Eduardo I.T. v. United States*, 4:22-cv-05333 (N.D. Cal.); *E.L.A. v. United States*, No. 2:20-cv-1524 (W.D. Wash); *E.S.M. v. United States*, No. 4:21-cv-00029 (D. Ariz.); *F.C.C. v. United States*, No. 2:22-cv-05057 (E.D.N.Y.); *Flores Benitez v. United States*, No. 3:22-cv-00884 (D. Conn.); *F.R. v. United States*, No. 2:21-cv-00339 (D. Ariz.); *Fuentes-Ortega v. United States*, No. 2:22-cv-0449 (D. Ariz.); *Gonzales de Zuniga v. United States*, No. 2:23-cv-00162 (D. N.M.); *J.A.L.C. v. United States*, No. 3:22-cv-06587 (D. N.J.); *J.P. v. United States*, No. 2:22-cv-00683 (D. Ariz.); *J.R.G. v. United States*, 4:22-cv-5183 (N.D. Cal.); *K.O. v. United States*, No. 1:20-cv-12015 (D. Mass); *Leticia v. United States*, No. 22-cv-75027 (E.D.N.Y.); *M.A.N.H. v. United States*, No. 5:23-cv-00372 (C.D. Cal.); *M.M.C. v. United States*, No. 1:23-cv-00158 (D. R.I.); *M.S.E. v. United States*, No. 2:22-cv-01242 (D. Ariz.); *Nunez Euceda v. United States*, No. 2:20-cv-10793 (C.D. Cal.); *P.G. v. United States*, 21-cv-04457 (E.D. Cal.); *R.J.P. v. United States*, No. 3:22-cv-06588 (D. N.J.); *R.Y.M.R. v. United States*, No. 1:20-cv-23598 (S.D. Fla.); *S.E.B.M. v. United States*, No. 1:21-cv-00095 (D.N.M.); *Selvin Caal v. United States*, No. 1:23-cv-00598 (N.D. Ill.); *S.M.F. v. United States*, No. 2:22-cv-01193 (W.D. Wa.); *W.P.V. v. United States*, No. 1:21-cv-04436 (S.D.N.Y.); *A.I.I.L. v. Sessions et al.*, No. 4:19-cv-00481-SHR (D. Ariz.).

11. Relief Sought

Plaintiffs' Complaint seeks the following relief: compensatory damages and "[s]uch other and further relief as the Court deems just and appropriate." The basis for the damages is the extreme and intentional emotional harm that Defendant's employees inflicted upon them, which Plaintiffs have described in their complaint. ECF No. 1 ¶¶ 53–85.

12. Settlement and ADR

In 2021, the government engaged in negotiations to globally settle district court cases and pending administrative tort claims arising from family separations at the U.S.-Mexico border. Neither the Plaintiffs in this case nor their counsel were part of those negotiations. No settlement was reached.

In their Rule 26(f) conference, the parties discussed the possibility of an ADR event. Defendants believe it would be premature to hold any ADR event until at least after the completion of fact discovery, medical examinations of Plaintiffs, expert discovery and briefing of summary judgment motions.

13. Other References

None.

14. Narrowing of Issues

The parties agreed to meet and confer as necessary to narrow the issues in this case.

15. Expedited Trial Procedure

None suggested at this time.

16. Scheduling

The parties have discussed and agreed – subject to the Court’s availability and discretion – upon the discovery and dispositive motions schedule listed in the table below:

Event	Proposed Deadlines
Exchange of Initial Disclosures	June 9, 2023
Completion of 90-day disclosure period	August 14, 2023
Close of Fact Discovery (including deadline for completion of independent medical examinations of Plaintiffs)	August 16, 2024
Initial Expert Disclosures	September 30, 2024
Rebuttal Expert Disclosures	November 14, 2024
Close of Expert Discovery	December 19, 2024
Filing of Summary Judgment Motions	January 23, 2025

Filing of Summary Judgment Oppositions	February 25 , 2025
Filing of Replies in Support of Summary Judgment Motions	March 25, 2025
Hearing on Summary Judgment Motions	April 17, 2025

The parties propose the following as to the pre-trial and trial scheduling:

Event	Proposed Deadlines
Deadline for pre-trial meet and confer	July 17, 2025
Pre-trial filings due	July 31, 2025
Pre-trial conference	September 11, 2025
First day of trial	September 22, 2025

17. Trial

Plaintiffs and Defendant agree that claims brought under the FTCA are tried by the Court.

Plaintiffs and Defendant set forth their proposals regarding pre-trial and trial scheduling under Section 16.

18. Disclosure of Non-Party Interested Entities or Persons

Plaintiff is unaware of any non-party interested entities or persons.

Defendant is exempt from this requirement as a federal government entity.

19. Professional Conduct

The parties' counsel have reviewed the Guidelines for Professional Conduct for the Northern District of California.

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20. Such Other Matters As May Facilitate Just, Speedy and Inexpensive Resolution

None.

Dated: May 9, 2023

LAW OFFICE OF JULIANNA RIVERA

By: /s/ Julianna Rivera
Julianna Rivera Maul

NORTHWEST IMMIGRANT RIGHTS PROJECT

By: /s/ Matt Adams
Matt Adams
Aaron Korthuis

Counsel for Plaintiffs

Dated: May 9, 2023

Respectfully submitted,

ISMAIL RAMSEY
United States Attorney

/s/ Kenneth W. Brakebill¹
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Counsel for the United States of
America

¹ In compliance with Civil Local Rule 5-1(i)(3), the filer of this document attests under penalty of perjury that all signatories have concurred in the filing of this document.

[PROPOSED] ORDER

Pursuant to Stipulation, and good cause appearing, IT IS SO ORDERED that the above JOINT CASE MANAGEMENT STATEMENT and the below discovery and dispositive motion schedule is approved as the Case Management Order for this case and all parties shall comply with its provisions.

Event	Deadlines
Exchange of Initial Disclosures	June 9, 2023
Completion of 90-day disclosure period	August 14, 2023
Close of Fact Discovery (including deadline for completion of independent medical examinations of Plaintiffs)	August 16, 2024
Initial Expert Disclosures	September 30, 2024
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Hearing on Summary Judgment Motions	April 17, 2025

IT ALSO IS SO ORDERED that the above JOINT CASE MANAGEMENT STATEMENT and the below pre-trial and trial schedule is approved as the Case Management Order for this case and all parties shall comply with its provisions.

Event	Deadlines
Deadline for pre-trial meet and confer	July 17, 2025

Pre-trial filings due	July 31, 2025
Pre-trial conference	September 11, 2025
First day of trial	September 22, 2025

DATED: _____

HON. KANDIS A. WESTMORE
United States Magistrate Judge